Legislators Strike Out: Volunteer Little League Coaches Should Not Be Immune from Tort Liability

I. INTRODUCTION

Millions of American families participate in various forms of little league baseball, whether it be with municipal or for-profit leagues.[1] Many children and parents are also involved in similar leagues for soccer, football, basketball, wrestling, field hockey, ice hockey, and other sports. A great deal of people enjoy the thrill of a home run, a goal scored, a basket or touchdown made, as well as the fun and growth associated with such activities. Unfortunately, not every family has a positive experience with children's sports.

An unfortunate example of fun turned sour occurred in Runnymeade, New Jersey, when a little league player and his parents brought suit for injuries incurred during a game.[2] The child advanced that due to the coaches' negligence, he was injured.[3] According to the child, the coaches breached their duty of care by assigning him to the outfield, when they should have known that he was a "natural-born" infielder.[4] In the end, the parties settled the case for $125,000.[5]

The Runnymeade case, as well as other widely-publicized cases in the 1980's had serious repercussions. For example, in 1986, New Jersey, where the Runnymeade incident occurred, enacted statutes that would protect volunteer coaches from liability.[6] In other states, legislators viewed such "headline" cases as a stimuli for fear and apprehension which would dis-

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1. Erich Williams, *Little League Safety Issue Not a Hit With Some: National Group's Recommendations Called Overkill*, ARIZONA REPUBLIC, June 29, 1996, at C6.

2. *House Judiciary Committee Hearing on Health Reform Issues: Antitrust, Medical Malpractice, and Volunteer Protection*, 104th Cong., 1st Sess. 1 (February 27, 1996)(statement of Representative John E. Porter, Republican, Ill.) [hereinafter Testimony of Rep. John Porter].

3. *Id.*

4. *Id.*

5. *Id.*; *see also* Anthony McCaskey & Kenneth Biedzynski, *A Guide to the Legal Liability of Coaches for a Sports Participant's Injuries*, 6 SETON HALL J. OF SPORT L. 7, 62-63 n.288 (1996).

6. *See* N.J. STAT. ANN. § 2A:62A-6 (West 1994).

courage little league coaches from volunteering their time.[7] These states, fearful of losing volunteers as well as skyrocketing insurance rates, followed New Jersey's lead and passed volunteer immunity laws.[8]

The reality is that these headline cases occurred over ten years ago and represent only a small percentage of cases.[9] These examples are anomalies — sensationalist headlines meant to agitate the public's anger towards lawyers and the legal system. The public, in its rush to condemn the high number of lawsuits and lawyers, ignored the fact that some children were legitimately injured and entitled to an opportunity to seek damages. Rather than legislating immunity for wrongdoers, the legal system is the best place to fairly adjudicate such claims. The court system can properly deal with frivolous cases, adequate punishment for tortfeasors and fair and just compensation for an injured child.

This comment explores the tension between the various views of volunteer immunity and liability of little league coaches.

Part II discusses the first issue in the debate: whether a volunteer coach owes a duty to a little league participant. The duty of care discussion explores those cases which have established that coaches do a duty to participants. This discussion of a duty of care also addresses the assumption of the risk doctrine as barring actions against coaches and those cases which weaken this doctrine as a defense. Additionally, the duty of care discussion includes a brief examination of liability of volunteers in general, as embodied in the "Good Samaritan" doctrine and related statutes. Finally, Part II briefly discusses the social benefit of establishing a duty of care owed by little league coaches to participants.

Part III of this comment summarizes the current status of state statutory immunity for volunteers. This part of the comment discusses the statutory immunity from tort liability granted to charitable and non-profit organizations, including little league baseball and other children's sports leagues. The

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7. Charles Tremper, *Volunteers Vulnerable: Protective Laws Are Full of Holes*, 4 BUSINESS LAW TODAY 22, 23 (Nov./Dec. 1994) [hereinafter Tremper, *Volunteers Vulnerable*].

8. *Id.*

9. *Id.*

immunity that state statutes grant to the volunteers themselves, including immunity for volunteer coaches, is also discussed in Part III.

Part IV discusses the federal attempt to help both the organizations and volunteers, as well as the injured participant, in the form of Congress' Volunteer Protection Act. This section of the comment examines the opposing views of the proposed legislation. Part V explores another national option that is readily available, namely the idea of little league organizations and coaches insuring themselves.

The Conclusion offers the author's opinion that the state judicial system, coupled with insurance coverage will adequately protect both the injured child *and* the volunteer coach. Unlike the national solution in the form of a federal Volunteer Protection Act or the state immunity laws, the court system, coupled with insurance coverage, is the easiest and best way to reconcile the tensions between the injured's rights and the need to protect volunteers.

II. A Duty of Care?

Little league is part of the American way. Over nineteen million children participate every year.[10] Unfortunately, injury in the sport is also the American way, as 162,100 children are injured badly enough to require emergency room visits every year.[11] Who, if anyone, is responsible for these injuries? Does a coach owe a duty of care to protect the children from all injuries? Does the coach have a more limited duty of care to not act recklessly, intentionally or wantonly? Or does the little league participant assume all risks when he or she puts on the uniform and steps onto the field? The coach's duty of care varies depending on where you live, leaving children and coaches uncertain as to the liability risks of both coaching and playing little league baseball.

A. No Duty of Care Owed: Assumption of the Risk

Many courts have applied the traditional "assumption of the risk" doctrine to eliminate the idea that a coach owes any duty of care to sports participants. Some courts limited the as-

10. *See* Williams, *supra* note 1, at C6.
11. *Id.*

sumption of the risk doctrine and held that college coaches do not owe a duty of care to student athletes in college sports[12], nor do high school coaches owe a duty to student athletes in high school sports.[13] The main justification for not imposing a duty of care on coaches in these situations is that the sports participants knowingly assume the risk that is inherent to the sport.[14] Such cases appear to automatically bar an injured little league player from collecting for his injuries.

B. Duty of Care Owed

1. Secondary Assumption of the Risk, Reasonableness, and Weakening of the Assumption of the Risk Doctrine

Contrary to the "primary assumption of the risk" cases that usually govern sports and other "risky" activities, the California courts have applied the "secondary assumption of the risk doctrine" to the general concept of the duty of care owed by a coach to a sports participant.[15] Additionally, courts have questioned the usage of the assumption of the risk doctrine in sports context.[16] Some courts have even held that a little league coach owes a duty of care to participants,[17] which supports an argument that coaches do in fact owe a duty of care to their team members and can be held liable for any injuries that may occur to the child participant as a result of the volunteer coach's negligent actions.

The California Court of Appeals has held in several cases that a coach owes sports participants a duty of care. In *Tan v.*

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12. *See, e.g.*, Kleinknecht v. Gettysburg College, 989 F.2d 1360 (3d Cir. 1992); Albanov v. Colby College, 882 F. Supp. 840 (D. Maine 1993).

13. *See, e.g.*, Chudawasa v. Metropolitan Govt. of Nashville and Davidson Cty., 914 S.W.2d 922 (Tenn. 1995); Lewis v. Dependent School Dist. No. 10 of Pottawatomie Cty., OK, 808 P.2d 710 (Okla. 1991).

14. *Id.*; *see also* Cox v. Evergreen Church, 836 S.W.2d 167 (Tex. 1992); Schultz v. Catholic Church of Newark, 472 A.2d 531 (N.J. Super. Ct. App. Div. 1984).

15. *See* Wicker v. Costen, 43 Cal. Rptr. 2d 94 (1995); Fidopiastis v. Hirtler 41 Cal. Rptr. 2d. 94 (1995); Bushnell v. Japanese-American Religious and Cultural Center, 50 Cal. Rptr. 2d 671 (Cal. Ct. App. 1996); Galardi v. Seahorse Riding Club, 20 Cal. Rptr. 2d 270 (Cal. Ct. App. 1993); Tan v. Goddard, 17 Cal. Rptr. 2d 89 (Cal. Ct. App. 1993).

16. *See* Daniel Nestel, *Batter Up: Are Youth Baseball Leagues Overlooking the Safety of Participants?* 4 SETON HALL J. OF SPORT L. 77, 83-86 (1994); *see also* Rutter v. Northeastern Beaver County School District, 437 A.2d 1198 (Pa. 1981).

17. *See* Lasseigne v. American Legion, Nicholson Post #38, 558 So. 2d 614 (La. App. Ct. 1990).

Goddard[18], the Court of Appeals found that a coach, by instructing a student to jog an injured horse on a rocky track, breached his duty of care by not informing the student of these risks prior to the horse's fall and the participant's subsequent injuries.[19] In reversing the Superior Court's earlier decision, Judge Epstein stated that cases involving sports participants can fall into two categories: (1) primary assumption of the risk, in which the defendant owes no duty of care to the participant in an inherently dangerous activity and recovery for defendant's negligence is completely barred, and; (2) secondary assumption of the risk, in which the defendant owes a duty of care and has a degree of liability, even though the defendant knew of the risk of injury caused by the defendant's breach of that duty.[20] Such a duty, the court reasoned, was determined by the nature of the sport, as well as the defendant's relationship to the participant in that sport.[21] The court stated that due to the nature of the sports relationship between these individuals and sports participants, coaches and instructors did owe a duty to those people in their charge.[22] Consequently, the court held that the coach breached his duty of care by allowing the student to ride an injured horse on a rocky track, and was therefore liable to the student for his injuries.[23]

In *Galardi v. Seahorse Riding Club*[24], the California Court of Appeals, based on its ruling several months earlier in *Tan*, held that a coach who changed the position of horse jumps during a student's training session breached his duty of care and was liable for injuries sustained by the student when she fell off of her horse.[25] In reversing the Superior Court and earlier Appellate Court decisions, Judge Boren reasoned that the situation dealt with the secondary assumption of the risk theory, which held the coach to a duty of care.[26] The court agreed with the rationale of *Tan* which stated that the "general rule is that

18. 17 Cal. Rptr. 2d 89 (Cal. Ct. App. 1993).
19. *Id.* at 93.
20. *Id.* at 91-93 (discussing the leading California case addressing the assumption of the risk doctrine, *Knight v. Jewett*, 834 P.2d 696 (1992)).
21. *Tan*, 17 Cal. Rptr. 2d at 93.
22. *Id.*
23. *Id.*
24. 20 Cal. Rptr. 2d (Cal. Ct. App. 1993).
25. *Id.* at 273-75.
26. *Id.* at 273-74.

coaches and instructors owe a duty of care to their charges."[27] The court held the coach liable because he had knowledge superior to the participant's in the field of horse jumping.[28] Subsequently, the coach owed a duty of care to properly deploy the jumping barriers, and the breach of such a duty would render the coach liable to his student for any injuries incurred as a result of that negligence.[29]

However, the California Court of Appeals limited its view of the duty of care owed by coaches and instructors to sports participants established in the earlier cases of *Tan* and *Galaradi,* by its decision in *Bushnell v. Japanese-American Religious and Cultural Center*[30]. In *Bushnell*, a student injured himself while attempting to perform a judo move.[31] The majority held that unless the coach acted recklessly, or otherwise increased the risk of the activity, no liability should be imposed simply because the coach asked the participant to act beyond his or her abilities.[32] Any imposition of liability, the court reasoned, would chill coaches from encouraging students to challenge themselves in order to improve their skills.[33]

The court reconciled its decision with the holdings of *Tan* and *Galaradi* by stating that neither case held that coaches were strictly liable for injuries incurred by a participant in their care.[34] In these cases, the acts by the coaches had breached a duty of care; the coaches had acted recklessly or negligently and added to the risk to the participant. However, according to the court, the coach in *Bushnell* had merely allowed the student to attempt to perform a move, and the coach's action did not increase the risk to the participant, he did not act recklessly or with intent.[35]

In addition to the California cases, there is the Louisiana case of *Lasseigne v. American Legion, Nicholson Post # 38*.[36] In *Lasseigne*, the Louisiana Court of Appeals, Judge Foil, held the

27. *Id.* at 274.
28. *Id.*
29. *Galardi*, 20 Cal. Rptr. 2d at 274.
30. 50 Cal. Rptr. 2d 671 (Cal. Ct. App. 1996).
31. *Id.* at 673.
32. *Id.* at 674-75.
33. *Id.*
34. *Id.* at 674-75.
35. *Bushnell*, 50 Cal. Rptr. 2d at 676-77.
36. 558 So. 2d 614 (La. Ct. App. 1990).

little league coaches were not liable for injuries sustained by a participant when another child hit the player on the head with a ball.[37] The court found that the coaches had acted reasonably, and had therefore not breached the duty of care owed to the participants which was to act reasonably.[38] The court did not dismiss the case based on assumption of the risk; rather, the court found that a duty of care did exist, the coaches had acted reasonably, and did not breach of their duty.[39]

In addition to those cases holding that the primary assumption of the risk cannot be a defense in cases of a coach acting negligently, other cases have held that the primary assumption of the risk doctrine itself may not be an automatic defense. In *Rutter v. Northeastern Beaver County School Board*[40], the Pennsylvania Supreme Court found that the assumption of the risk doctrine did not apply to injuries incurred by a high school student during an informal game of "jungle football."[41] Consequently, the assumption of the risk doctrine in that state was nearly abolished.[42] The Pennsylvania Supreme Court favored the contributory negligence and duty analyses, holding the assumption of the risk total bar rule involved too much confusion and ambiguity to completely preclude recovery for an injured party.[43] A more recent decision by the Pennsylvania Superior Court utilized a modified assumption of the risk doctrine to "review the factual scenario and determine whether '[u]nder those facts,. . .the defendant, as a matter of law, owed plaintiff no duty of care.'"[44]

Though the Pennsylvania Courts did not completely abolish the assumption of the risk defense in sports, that doctrine is

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37. *Id.* at 616.

38. *Id.* at 616. The court found that the coaches had not acted "unreasonably" in supervising the baseball team. The coaches' supervision included observing practice, caring for the child when he was struck with a baseball, and observing the child's progress after being hit. *Id.* at 615.

39. *Id.* at 616.

40. 437 A.2d 1198 (Pa. 1981).

41. "Jungle football" is defined as a fast-paced football-like game, in which participants have four downs to advance the ball for a score by passing laterally, forward or backward. *Id.* at 1201. In the instant case, the coaches were involved in the game, and less likely to supervise the players. *Id.*

42. *Id.* at 1210 (relying on authorities from 19 other states). This decision was a plurality decision with dissents and NOT a majority opinion. *Id.* The court overturned the lower court's ruling. *Id.*

43. *Id.* at 1211.

44. Hardy v. Southland Corp. 645 A.2d 839, 841-42 (Pa. Super. Ct. 1994).

certainly changing and is no longer the automatic defense that it once was. More specifically, following the language of Pennsylvania's modified assumption of the risk doctrine and the language of the California cases establishing that a coach does owe a duty of care to a participant, the coach may breach a duty of care and therefore be liable in cases where the facts support liability. Little league coaches can no longer automatically expect to be protected from liability by the assumption of the risk doctrine.

2. General Duty of Care for Volunteers - the "Good Samaritan" Doctrine

Both courts and state legislatures have addressed a general duty of care for all volunteers. The "Good Samaritan doctrine" states that a volunteer is liable for actions that breach a reasonable duty of care, as measured against a 'reasonable person' under similar circumstances.[45] In *Redmon v. Stone*[46], Judge Green of the Illinois Appellate Court held that "Good Samaritans" have a duty to act reasonably, although such a duty should be 'narrowly construed' as a matter of public policy to promote volunteerism.[47] The court relied on prior case law that dealt with reasonable standards of care as well as the Restatement of Torts in reaching its decision.[48]

Although almost every state legislature has enacted stat-

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45. Prior to 1959 when California enacted the first 'good samaritan statute', which afforded some immunity to volunteers, most jurisdictions dealt with 'Good Samaritans' by way of the RESTATEMENT OF TORTS § 324 (1964) which states:

> One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by
> (a) failure of the actor to exercise *reasonable care* to secure the safety of the other while within the actor's charge, or
> (b) the actor's discontinuing his aid or protection, if by so doing leaves the other in a worse position than when the actor took charge of him.

Robert Mason, Note, *Good Samaritan Laws - Legal Disarray: An Update*, 38 MERCER L. REV. 1439, 1440 (1987)(citing RESTATEMENT OF TORTS § 324 (1964))(emphasis added).

46. 667 N.E.2d 526 (Ill. App. Ct. 1996).

47. *Id.* at 530. The court found that Redmon's behavior did not breach a duty of care, as his lack of actions, in regard to safety precautions while assisting Stone with her stalled car, did not increase the likelihood of Stone's injuries. *Id.*

48. *Id.* at 528-30. The court cites to the RESTATEMENT OF TORTS § 324A (Second)(1965), as well as Rhodes v. Illinois Central Gulf R.R., 645 N.E.2d 298 (Ill. App. Ct. 1994), *rev'd* 665 N.E.2d 1260 (Ill. 1996); Deckers v. Domino's Pizza, Inc., 644 N.E.2d 515 (Ill. App. Ct. 1994); Urbas v. Saintco, Inc., 636 N.E.2d 1214 (Ill. App. Ct. 1994); Vessey v. Chicago Housing Authority, 583 N.E.2d 538, 544 (Ill. App. Ct. 1991).

utes that grant some form of immunity to good samaritans, many of these statutes still maintain that a "Good Samaritan" must act in a reasonable or non-negligent manner.[49] Such statutes are essentially a codification of the common law view. Additionally, those statutes that grant immunity to "Good Samaritans" have rarely been called upon or used in litigation.[50] Consequently, despite these statutes, the common law view of the "Good Samaritan" doctrine continues to exist.[51]

While it is true that some state statutes and decisions have held a 'Good Samaritan' immune from liability, many state statutes and state court decisions establish that a volunteer "Good Samaritan" does have a duty to act reasonably or non-negligently. If a person in a hectic and chaotic emergency situation can be held to a duty of care without great discouragement of involvement, a volunteer little league coach, who can easily avoid liability by acting reasonably, can also be held to such a standard. The idea of holding "Good Samaritans" to a standard of care, yet granting immunity to volunteer little league coaches is unreasonable and non-sensical. What makes the social utility of coaches greater than 'Good Samaritans'? Despite the various state's volunteer immunity statutes, volunteer coaches should be held to a negligence standard of care, just as 'Good Samaritans' are.

3. Social Policy

Aside from these legal arguments, little league coaches owe a duty of care to the sports participants in their charge for socially beneficial reasons. Each year, thousands of children are injured in little league baseball alone.[52] The cost of such inju-

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49. *See* Mason, *supra* note 45, at 1461-74. Table I summarizes the state of Good Samaritan laws across the country, including several statutes that would hold an ordinary person to a reasonable standard of care in assisting those in need. *Id.*; *see, e.g.*, CAL. HARB. & NAV. CODE § 656 (West 1987)(good samaritan must act in a reasonable and prudent manner); FLA. STAT. § 768.13 (1984)(good samaritan must act as a "reasonably prudent man"); MD. CTS. & JUD. PROC. CODE ANN. § 5-309 (1984)(requires reasonable, prudent person standard). Other states that have "Good Samaritan" laws holding volunteers to a "reasonable person" standard of care include Mississippi, Oregon, Arkansas, and Rhode Island. Mason, *supra* note 45, at 1450-51.

50. *Id.* at 1443-44.

51. *Id.* at 1450-51.

52. Nestel, *supra* note 16, at 90-92. Based on a 1981 study by the Consumer Product Safety Commission, an estimated 359,400 medically attended baseball injuries occurred annually. *Id.* Of these injuries, 121,700 were hospital emergency room-treated baseball injuries. *Id.*; *see also* Williams, *supra* note 1.

ries to both society and the individuals themselves, are large.[53]

Some type of redress is needed for children who are seriously injured due to the negligence of their little league coaches. If the child can prove that the volunteer coach owed a duty of care, and breached that duty, then the child should be able to receive a financial remedy. Failure to hold the coach to a reasonable duty of care would preclude many injured children from receiving the just compensation they deserve.[54] This is not an attempt to blame someone for the injury, but rather to hold accountable any coach who caused the child's injury. Accordingly, social benefits, coupled with the legal basis from case law, justify the existence of a duty of care that will hold a little league coach liable to an injured participant if that coach acts wantonly, intentionally, grossly negligent, or *merely negligent*.

4. Duty of Care Is Owed

Little league coaches do owe a duty of care to those participants in their charge. California and Louisiana cases have held that a coach owes a duty of care to those in his charge. Coaches who do not act reasonably, or who act recklessly, intentionally or wantonly, breach that duty of care.
Additionally, even those cases in which the participant's claim would normally be barred by the assumption of the risk doctrine, the weakening of that doctrine has questioned its validity, even in its usual place of cases involving the sporting field. Cases advocating the weakening of the assumption of the risk doctrine indicate that an argument that the assumption of the risk doctrine is not the absolute defense that once protected a little league coach from liability. Also, an argument can be made that as other volunteers, such as "Good Samaritans", are held to a duty of care, so should volunteer little league coaches. Finally, holding volunteer coaches to a reasonable standard of care is socially beneficial. Therefore, a volunteer little league

53. According to a 1982 study of youth hockey leagues, the cost of an eye injury to each individual player was $1,586 (in 1980 dollars). This figure obviously could not take into account the significantly higher cost of health care today. Nestel, *supra* note 16, at 93-94 (citing DR. PAUL F. VINGER DR. EARL F. HOERNER, SPORTS INJURIES: THE UNTHWARTED EPIDEMIC 46 (2d ed. 1986)).

54. Charles E. Tremper, *Compensation for Harm from Charitable Activity*, 76 CORNELL L. REV. 401, 432-33 (1991) [hereinafter Tremper, *Compensation for Harm from Charitable Immunity*].

coach owes a duty of care to those participants in his or her charge.

III. State Legislative Protection of Volunteer Little League Coaches

Despite the fact that volunteer little league coaches do owe a duty of care to participants in his or her care, a potential injured child plaintiff may not collect for his or her legitimate injuries. In many states, legislation protects charitable organizations from tort liability.[55] Additionally, some states have enacted legislation that protects volunteers from liability, holding them immune from all tort lability.[56] Apparently, some state legislatures have decided that to prevent the chilling effect liability may have on parents wanting to volunteer as little league coaches, these volunteers are included in the immunity protection framework.[57] This piece-meal approach means that the protection of coaches from liability varies from state to state, with no real consistency.[58] Additionally, in those states that do protect their volunteers, the legislation leaves the injured participant without any remedy.

In New Jersey, home to the Runnymeade case, legislation limits liability for charitable organizations.[59] The courts in that state determined that municipal little league organizations themselves are indeed protected by the charitable immunity legislation.[60] An injured little league participant in New

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55. *See* Note, *Special Treatment and Tort Law*, 105 Harvard L. Rev. 1677 (1992)(summarizing the state legislation that exists to protect charitable organizations).

56. *See, e.g.*, Idaho Code § 53-706 (1993); Mass. Gen. Laws Ann. ch. 231, § 85K (West 1985).

57. Apparently, state courts have backed up their state's legislatures efforts to grant immunity to volunteer little league coaches. *See, e.g.*, Byrne v. Baseball of Collinswood, 564 A.2d 122 (N.J. Super. Ct. App. Div. 1989), *infra* note 68.

58. In 1992, the states had exclusions as to volunteer liability immunity as follows: 16 states limited liability immunity if the volunteer acted in bad faith, 27 states limited liability immunity if the volunteer acted willfully or intentionally, four states limited liability immunity if the volunteer acted recklessly, and nine states limited liability immunity if the volunteers behavior involved gross negligence. Francis J. Leazes, Jr., *"Pay Now or Pay Later:" Training and Torts in Public Sector Human Services*, 24 Public Personnel Management, June 22, 1995, at 167 (Table 3).

59. N.J. Stat. Ann. § 2A:53A-7 (West 1995).

60. In *Pomeroy v. Little League Baseball of Collingswood*, 362 A.2d 39 (N.J. Super. Ct. App. Div. 1976), the New Jersey Superior Court, Appellate Division, held a municipal little league organization was immune from suit by a spectator who was injured when a bleacher she was sitting in while watching a game collapsed. The Appellate Division agreed with the trial judge's finding that the little league was organized for educational

Jersey would find recovery from the little league charitable organization difficult, if not impossible, for an action of mere negligence.[61]

New Jersey has also enacted legislation that specifically protects volunteer coaches from liability.[62] This immunity is only effective if the volunteer coach has participated in an approved safety program.[63] Should an injured participant be able to prove that the coach failed to obtain the proper safety training, the legislative tort immunity does not apply.[64] Such legislation allows parents to volunteer as coaches while protecting injured participants against willful, wanton and intentional conduct by coaches.[65] Still, this legislation does not help a participant who is injured through a coach's general negligence, and in fact, protects the tortfeasor.

Other states have also addressed charitable organization and volunteer immunity. Some states have enacted legislation similar to New Jersey's, thereby preventing injured parties from suing the charitable organization.[66] Still other states have enacted legislation that merely limits the organization's liability to certain dollar amounts.[67] Also, some states have enacted legislation similar to New Jersey's that protect volunteer sports coaches, should they have completed the requisite

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purposes. *Id.* at 41. The Appellate Division also agreed with the trial judge that the spectator was a beneficiary of the little league. *Id.* at 41-42. Therefore, because the little league was a charitable organization, dedicated to educational purposes, and the plaintiff spectator was a beneficiary of such services, the little league was immune from liability, as established in N.J. STAT. ANN. § 2A:53A-7. *Id.*

61. N.J. STAT. ANN. 2A:53-7 states that charitablé organizations are immune from suit by beneficiaries of that organization. While *Pomeroy* established that spectators are beneficiaries of a little league charitable organization, participants in little league are obviously beneficiaries who would be forbidden to sue under N.J. STAT. ANN. 2A:53-7. *See also* Byrne v. Boys Baseball League, 564 A.2d 1222 (N.J. Super. Ct. App. Div. 1989).

62. N.J. STAT. ANN. § 2A:62A-6 (West 1988).

63. *Id.*

64. In *Byrne v. Boys Baseball League*, 564 A.2d 1222 (N.J. Super. Ct. App. Div. 1989), the Superior Court, Appellate Division, held that the tort immunity created by N.J. STAT. ANN. 2A:62-6A was conditioned upon a coach's completion of an approved safety program. The clear language of the legislation conditioned on immunity once a coach participated in such a program, as he or she would then be familiar with proper safety procedures to prevent injury to participants. *Id.* at 1224-25.

65. *See* N.J. STAT. ANN. 2A:62A-6.

66. *See, e.g.*, OKLA. STAT. ANN. tit. 76, §31 (West 1995).

67. *See, e.g.*, MASS GEN. LAWS ANN. ch. 231, §85K (West 1988).

safety program.[68] Similar to the New Jersey legislation, these statutes do not protect the coach if he or she has acted wantonly, recklessly or intentionally.

Those states that grant statutory immunity to volunteer little league coaches and charitable organizations substantially, if not completely, preclude an injured little league participant from recovery in mere negligence actions. These immunity statutes are a confusing patchwork of laws, under which some of the state statutes may make the coach liable for a certain dollar amount in one state, while other state statutes could hold the volunteer liable only if he or she acts willfully, wantonly or intentionally in another state, and still other state immunity laws could grant the volunteer coach complete immunity with proper training.

An example may be helpful to illustrate the confusion. If a little league participant is injured in Moline, Illinois as a result of the negligent actions of his coach, he may be barred from recovery by that state's volunteer and charitable immunity laws.[69] Meanwhile, a few miles across the Mississippi river, a child in Davenport, Iowa may recover for the same injury caused by his or her coach's negligence, and the volunteer may be liable for some of those damages.[70] Obviously, such a situation is unfair to both the volunteer coach and the injured participant.

The inconsistency of the state of volunteer liability in the nation results in volunteer coaches, charitable organizations, and injured participants being controlled by the "political winds" of their state legislatures. If lawyers lobby state legis-

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68. *See, e.g.,* ILL. ANN. STAT. ch. 345, para. 80/1 - 80/6 (Smith-Hurd 1993); IND. CODE. ANN. § 34-4-11.8-6 (West 1987).

69. ILL. ANN. STAT., ch. 745, para. 80/1 (Smith-Hurd 1993), the applicable statute states, in pertinent part:

> 1. Manager, coach, umpire, or referee negligence standard.
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> (a) General Rule. Except as provided otherwise in this Section, no person who, without compensation and as a volunteer. . .shall be liable to any person for any civil conducting. . .unless it is shown that such person did an act or omitted the doing of an act which such person by that such act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of such person fell below ordinary standards of care.

ILL. ANN. STAT., ch. 745, para. 80/1 (emphasis added).

70. Iowa is *not* a state that affords volunteer immunity from liability. *See* Nestel, *supra* note 16, at 62-63.

lators enough one election year, then maybe no immunity laws are passed. But if charitable organizations lobby harder that year, then immunity laws are passed, and the injured participant cannot recover for injuries. The state legislators control the amount of immunity or liability in any potential litigation. The courts, which usually decide such matters based on years of case law and procedural safeguards, are precluded from deciding negligence issues. The tortfeasor will therefore go unpunished, and the injured party goes without a remedy. The usual role of the courts is diminished and justice is not served.

Additionally, the threat of an "avalanche" of lawsuits, which inspired states in the 1980's to enact such legislation, has not materialized. Despite the media's attempt to harm lawyers' images and terrify the public, the numbers of little league lawsuits are not that substantial.[71] Once the public became better informed on the facts that lawsuits against coaches are quite rare, support for immunity statutes would fade.

The various pieces of state legislation granting immunity from tort liability to little league coaches and the organizations themselves creates a confusing and incongruous situation. Most legislation would allow an injured plaintiff to sue a volunteer coach if that coach's behavior was willful, wanton or intentional. However, state immunity laws bar a lawsuit against the both the volunteer coaches and the little league, even if the actors behaved in a negligent manner. On the other hand, coaches may be held liable for certain amounts, or for entire amounts should they fail to participate in a safety program. Clearly, the state system of mix-and-match liability leaves room for inequities against both the volunteer little league coaches as well as the injured participants and the charitable organizations.

IV. Legislative Protection of Volunteer Little League Coaches - The Proposed Federal Legislation

In addition to the courts and state legislatures, Congress has attempted to introduce a federal solution to the problem of volunteer immunity. This proposed legislation encompasses volunteer little league coaches. The Congressional solution is

71. *See infra* note 108.

similar to that of the states which have adopted immunity statutes, similarly leaving a plaintiff injured through mere negligence uncompensated.

In Congress, the Republicans are spearheading the drive to enact legislation that could possibly protect and reconcile the rights of volunteer coaches and injured participants. In the Senate, Senator McConnell (Republican - Kentucky) introduced Senate Bill 1435.[72] In the House of Representatives, Representative John Porter (Republican - Illinois) has introduced House Bill, H.R. 911.[73]

These two bills essentially seek to create the same thing: a uniform, national guide for states to follow regarding the protection of volunteers from tort liability.[74] Both bills are intended to encourage the states to grant immunity to volunteers working on behalf of charitable organizations by offering those states that comply a 1% increase in their Social Service Block Grants.[75] The states may grant certain exceptions, such as willful, wanton or intentional behavior by the volunteers,[76] and require volunteers to participate in "risk management training and procedures.[77] Volunteer protection from liability would only apply if the organization obtained adequate insurance, so that a person injured by a volunteer could sue the organization, which would be covered by that insurance.[78]

The House Bill has been urged by Congressman Porter for quite some time. The Congressman first introduced the bill in 1986, and has done so in each subsequent session of Congress ever since.[79] In 1990, Congressman Porter amended the National Service Act to include the Volunteer Protection Act, but the House Judicial Committee conferees voted 3-2 to strip the

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72. S. 1435, 104th Cong., 1st Sess. (1996).

73. H.R. 911 104th Cong., 1st Sess. (1996).

74. House Bill 911 and Senate Bill 1435 are ALMOST identical, but for one important aspect. In House Bill 911, section 3 indicates that the bill, if adopted by a state, would NOT pre-empt existing state laws granting volunteers immunity to liability. However, section 3 of Senate Bill 1435, states that the federal legislation WOULD pre-empt state volunteer protection laws.

75. H.R. 911, § 5.

76. *Id.* at § 4(a)(2).

77. *Id.* at §4(d)(1).

78. *Id.* at §4(d)(4).

79. STAFF OF CONGRESSMAN JOHN PORTER, REPORT ON THE VOLUNTEER IMMUNITY ACT, 104th Cong., 1st Sess. (July 9, 1996).

provision from the final bill.[80] In 1993, Congressman Porter attempted to add the Volunteer protection Act to President Clinton's National Service Trust Act, the community service program for America's youth.[81] However, the final bill was enacted without the Volunteer Protection Act language or any provision regarding tort liability for the program's participants.[82]

Currently, Congressman Porter has again reintroduced House Bill 911 in the 104th session of Congress, with approximately 200 co-sponsors.[83] As of publication, the bill has not been voted on, and it has been referred to the Subcommittee on Human Resources, on the House Committee on Ways and Means.[84] Senate Bill 1435 was introduced by Senator Robert McConnell(R-Ky) in November 1995 and has not yet been voted on either.[85]

A. Proponents of the Legislation

Proponents of these bills, particularly H.R. 911, believe that the federal legislation would streamline the tort system, allowing for volunteers to breathe easier and without fear of suit.[86] Disturbing examples such as the little league coaches sued in Runnymeade, New Jersey would be an item of the past. Additionally, state legislation which complied with the federal bill could be based on any existing state volunteer protection legislation.[87] Under the proposed bill, individuals could sue the charitable organizations, which would in turn be insured, thereby assuring compensation for the injured party.[88] To further protect themselves, charitable organizations could man-

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80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.*
84. Dawn Kopeki, *Interstate Insurance Could Become Easier*, WASHINGTON TIMES, Apr. 7, 1997, at D11.
85. *House Judiciary Committee Hearing on Health Reform Issues: Antitrust, Medical Malpractice, and Volunteer Protection*, 104th Con., 1st Sess. 1 (Feb. 28, 1996)(statement of Senator Mitch McConnell, Republican, Kentucky).
86. *See House Judiciary Committee Hearing on Health Reform Issues: Antitrust, Medical Malpractice, and Volunteer Protection*, 104th Cong., 1st Sess. 1 (Feb. 28, 1996) (Testimony of American Association of Diabetes Chairman John Graham) [hereinafter Testimony of American Association of Diabetes Chairman John Graham].
87. *Id.*
88. *Id.*

date safety training programs for their volunteers in order to decrease the likelihood of accidents that could lead to lawsuits.[89]

Proponents claim that the bill would allow people to volunteer without fear of being sued. Proponents also assert that the bill would encourage the states to enact legislation that would grant immunity for volunteer coaches only upon completion of a certified safety program, similar to the legislation enacted in New Jersey.[90] Additionally, proponents believe the federal bill would streamline the volunteer liability system, bringing order to the patchwork of state liability laws. Finally, proponents contend that the federal bill would not protect tortfeasors any more than many existing state laws.

B. Problems With the Bill

However, the proposed federal legislation appears to have several problems. Opponents argue that the Federal Volunteer Protection Act would encroach on functions and powers normally left to the state.[91] The opponents point out that advocates of the volunteer protection bills are attempting to bring the federal government into local matters.[92] In 1991, President Bush favored a Model Volunteer Protection Act over the proposed Volunteer Protection Act.[93] The President supported this Act rather than the Congressional bill because of concerns over federalism aspects of the legislation.[94]

Opponents of the federal legislation also point out that although volunteering may be an important government interest, the federal legislation does protect tortfeasors, which is harmful to the injured party.[95] Rather than rely on the federal government to limit frivolous suits, the opponents of the Volunteer Protection Act would rather allow the existing judicial system to weed out frivolous suits. Examples such as the case

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89. *Id.*

90. *See* N.J. STAT. ANN. 2A:62A-6

91. Telephone Interview with George Constatine, Lobbyist for Association of Trial Lawyers of America (July 19, 1996) [hereinafter Telephone Interview].

92. *Id.*

93. Note, *Special Treatment and Tort Law*, *supra* note 55, at 1680.

94. *Id.*

95. Telephone Interview, *supra* note 91; *see also* Walton v. City of Manchester, 666 A.2d 978 (N.H. 1995).

in Runnymeade do exist, but are not the norm.[96] These headline cases are merely meant to agitate anti-lawyer feelings and garner sympathy and panic.[97] The majority of cases are either settled, tried or quietly resolved, or dismissed by judges and juries if the issues are frivolous and ridiculous.[98] For example, the highly publicized Runnymeade case, was settled by the parties, before it even entered the courtroom.[99]

C. Federal Legislation Is Not a Solution

The proposed federal legislation's purpose and intention is both sound and positive. Protecting volunteers is certainly a worthy cause. However, as currently written, the bill does not address some legitimate concerns, including an injured participant's right to recovery. While an admirable attempt to respond to a true problem, the bill falls short of protecting everyone's interests. To do so may in fact be impossible, and those problems associated with the Senate and House bills are significant.

V. Insurance and Volunteer Little League Protection

The best way to give volunteer little league coaches a uniform system of protection without granting them statutory immunity is to require volunteer coaches and/or the little leagues to obtain insurance. Unlike the state immunity schemes, insurance would protect both the volunteer coach and the league from liability, as well as provide compensation for any participant who was injured through the negligent actions of the coach. Unlike the federal Volunteer Protection Act, no federalism problems would arise. Finally, the courts could be back in their rightful place, determining liability of tortfeasors.

The largest problem with insurance is the fact that such coverage is obviously not free, and in fact can be quite costly, leading to the fear that charitable organizations and volunteer will be unable to insure themselves.[100] As these organizations

96. *See* Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 412. The media stirred up a great deal of hysteria regarding lawsuits against charitable organizations and volunteers. *Id.* However, reality shows that claims against volunteers are rare, although these numbers are difficult to verify. *Id.*

97. *Id.*

98. *Id.*

99. *See* Testimony of Rep. John Porter, *supra* note 2, at 1.

100. *See* Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54,

are obviously non-profit, they cannot pass the higher costs of doing business, namely liability insurance, onto the consumer.[101] Parents may be less enthusiastic about the added costs of insurance to little league registration fees.[102] Additionally, volunteers may be discouraged from offering their services if they are asked to acquire costly insurance.[103]

However, solutions to these problems do exist. One admittedly unpleasant way that the organization could afford the extra cost of insurance would be by cutting services that may be deemed "risky".[104] Additionally, the volunteer coaches could insure themselves, as the little league could also ask its volunteers to obtain their own liability insurance.[105] Obviously, neither of these "solutions" are very palatable. But to protect the volunteer coaches as well as the little league organizations, while at the same time provide some compensation for those participants who are legitimately injured as a result of negligent conduct, these options are necessary.

To make the solution of volunteer coaches and little leagues insuring themselves work better, steps can be taken to reduce the cost of the insurance. One way would be to use "safer" equipment, such as softer balls, visors, improved helmets and the like.[106] Such equipment could reduce the cost of insurance by a great deal.[107]

An insurance-like alternative called the Charitable Redress System (CRS) is yet another possibility to allow coaches to volunteer worry-free while allowing injured participants some

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at 421. Since the mid-1980's, the cost of liability insurance has sky-rocketed, and then lowered. *Id.* Such volatility cannot be easily supported by most charitable organizations with limited resources. *Id.*

101. Note, *Special Treatment and Tort Law*, *supra* note 55 at 1692-1695.

102. Debra Nussbaum, *Watch Your Step*, CHI. TRIB., June 28, 1996, at 1. The cost of insurance is $600 for an umbrella policy, and $25-$50 to add liability insurance to an individual's homeowner insurance policy. *Id.*

103. *Id.*; *see also* Testimony of American Association of Diabetes Chairman John Graham, *supra* note 86, at 1. Insurance rates in the past three years for *organizations*, rather than individuals, has gone up 155% in the past three years. *Id.*(emphasis added).

104. Note, *Special Treatment and Tort Law*, *supra* note 55, at 1685-1690.

105. Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 428. "Little league programs in suburban communities are likely to survive because the volunteers and other necessary resources come from the same community that receives the benefit from the program." *Id.*

106. Malene Cimons, *Feds Pitch a Safer Baseball; Softer Balls, Batters' Faceguards Recommended*, WASHINGTON POST, June 11, 1996, at Z7.

107. *Id.*

form of compensation.[108] Under the CRS, an organization, rather than the volunteer, would extend an "offer" of settlement to the injured party, which would compensate the injured participant while immunizing the organization and its volunteers from further liability.[109] The "offer" would only cover expenses, rather than non-economic damages.[110] Such a system would ease the burden of volunteers insuring themselves, while simultaneously lessening the fiscal burden on charitable organizations.[111]

Finally, another possible way to combat the high cost of insurance would be through the state government. States could provide tax benefits, subsidies or other means for cheaper insurance rates in order to ease the insurance burden on the little league organizations and coaches.[112] Such a solution allows states to deal with the insurance problem in their own way - as they know what their citizens need most. Yet, unlike the immunity statutes, this solution would be fair to all the parties involved; thus solving the inequities of the statutory immunity system.

Such a solution may be understandably hard to stomach for most people in an era when less government is better government. However, asking the states to expend some money for cheaper insurance up front may actually save money further down the road. For example, if the injured party cannot collect for injuries from the insurer of the coach or organization, then who will assist the child? With high medical costs, both the state and federal governments may be forced to foot the bill for injured parties. By abolishing the immunity statutes and giving the power completely to the courts, the burden of compen-

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108. *See* Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 444.

109. *Id.* at 446, 456-457.

110. *Id.* at 447. Such offers would be paid through the charitable organization's primary insurer. State regulations may have to be adopted to prevent insurers from discriminating against such charitable organizations. *Id.* at 451. If the offer is not made or the offeror fails to satisfy the conditions, then the plaintiff could resort to a "modified" tort system, which would basically penalize the defendant for not complying with the CRS system. *Id.* at 454.

111. Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 458. The basic idea behind the CRS is to reduce the amount of recovery to actual expenses and the limit of the available insurance coverage, thereby lessening the insurance burden but still allowing an injured participant to be compensated. *Id.* at 456-459.

112. Note, *Special Treatment and Tort Law*, *supra* note 55, at 1692.

sating the injured will shift to the private sector.[113]

Although insurance may be an unpopular solution, it must be viewed objectively. Some believe that insurance threatens the very essence and idea of a volunteer little league coach. Undeniably, the number of volunteers have generally been declining.[114] However, insurance and lawsuits are not the only "culprit." Some people may be working longer hours and lack the time to volunteer. Others may not believe that volunteering and participating in children's sports is worth the potential trouble.[115] Clearly, insurance is not the only reason for the decline in volunteer coaches.[116]

Rather than view insurance as an "evil", it must be viewed as a method of allowing parents to volunteer free from worry of liability, while still allowing an injured participant compensation for injuries, regardless of the manner in which the coach acted. Ways of making insurance cheaper do exist and are relatively easy to institute. Additionally, the Charitable Redress System is a viable alternative to a costly insurance system. Constructive action to make insurance widely available, rather than granting statutory immunity would help all of the parties involved in little league.

VI. Conclusion

Clearly, a little league coach owes a duty of care to the children on his or her team. Such a duty prohibits the volunteer from acting willfully, intentionally, recklessly, or grossly negligent. Additionally, this duty demands that the volunteer must act "reasonably." If a coach breaches his or her duty of care, and this breach subsequently results in an injury to a little league participant, the coach must be held accountable.

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113. The volunteer protection statutes have not really been tested since their inception. Tremper, *Volunteers Vulnerable*, *supra* note 7, at 24-25. Additionally lawsuits involving volunteers and volunteer organizations since the 1980's have been relatively few and far between. Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 412.

114. *See* Testimony of American Association of Diabetes Chairman John Graham, *supra* note 86, at 1. One in six volunteers reported withholding due to fear of liability. *Id.*

115. *See* Robert Lypsyte, *Officials Fear 'Kill the Ump'Is No Longer a Joke*, Seattle Times, Feb. 9, 1997, at D5. Civility in youth league sports appears to have disappeared, as both players and coaches are behaving more crazy than ever. *Id.*

116. See Tremper, *Compensation for Harm from Charitable Immunity*, *supra* note 54, at 413. Certainly liability concerns have influenced the decline of numbers of volunteers, but that is not conclusively the only reason. *Id.*

However, it is also clear that volunteering is an important interest worth protecting. Whether the impression is correct or not, most people are very fearful of litigation. People are afraid to touch an injured person for fear of a suit for misfeasance. Certainly, granting a little league coach immunity would ease volunteers' fears and allow them to freely participate in children's lives and community affairs.

Many states have decided that even if case law may have established that a coach does owe a duty of care to the participants, the volunteer interest outweighs the duty of care. The legislation encourages parents to volunteer, protects an important interest, and certainly helps the state legislators appear as though they are combatting the "scourge" of frivolous lawsuits. However, the irregularities created by the fifty different levels of liability or immunity create inequities to both coaches and participants in Little League.

Additionally, Congress has certainly made a good effort to address these disparities in its attempt to enact the Volunteer Protection Act. However, the proposed legislation would not properly solve the problem. The legislation has potential federalism problems. Additionally, similar to state legislation, the federal bill offers no protection for those children who are, through no fault of their own, injured by the merely negligent actions of their coach.

Both the state statutes and the proposed Volunteer Protection Act preclude an injured participant from compensation in actions involving mere negligence. The coach and organization are only held liable for conduct that is intentional, wanton, or grossly negligent. However, the parties are "blameless" for mere negligent acts. What is the difference to a child if he or she loses her eyesight as a result of a coach's "mere" negligence or wanton or intentional conduct? Either way, that child loses his or her ability to see. But he or she will not be compensated for injuries - even though the coach was at fault in either case. Such a system seems blatantly unfair to injured children.

In the end, rather than the state statutes or the Volunteer Protection Act, the best solution is still the state judicial system. Under such a system, the volunteer coaches and little league, as well as the injured participant win. All tortfeasors are held accountable, rather than protected by any sort of blanket immunity, as created by the federal and state legislation.

Additionally, to promote volunteering, both little league organizations and municipalities with youth sports leagues, as well as the individual volunteers, can take out insurance policies. The benefit derived from the cost of the insurance far outweighs the specter of liability. Unlike the current hodge-podge of state immunity laws, all volunteer coaches would be "immune" but the injured party could attempt to collect for his or her injuries, and the organization could refer any such claims to its insurance carrier.

The best solution is to repeal the state immunity laws and allow the courts to do what they are supposed to do: award damages to injured plaintiffs and conversely, dismiss those claims that may be frivolous. This option, coupled with adequate, relatively inexpensive insurance coverage, would work to protect all of the parties involved. Such a solution would work towards quelling the nation's fear of lawsuits and liability, while protecting injured plaintiffs. Education of the public, as to the improbability of lawsuits involving volunteer little league coaches would further help assuage unfounded fears and increase the number of volunteers. Even if the majority of people wrongly perceive that lawsuits are out of control, the injured plaintiffs cannot be neglected. Little league coaches should be able to coach free from the fear of liability, but not at the expense of a child injured by that coach's negligence.

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