

Legislation Meets Tradition:

Interpretations and Implications of the
Volunteer Protection Act for Nonprofit
Organizations as viewed through the
Lens of Hermeneutics

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Summary of research

- Examination of the Volunteer Protection Act from a practical and hermeneutical perspective
 - Extent to which to which the Act fills its purpose of protecting volunteers
 - Extent to which the interpretation of the Act has changed (or not) since its enactment
- By examining how the courts have ruled on this legislation.

Introduction

- America has a deep history of volunteerism
 - Beginning in Colonial times
- Spans all aspects of society
 - Formal/informal groups
 - Private nonprofits
 - Public/governmental agencies
- Volunteers provide wide range of services
- What happens when something goes wrong?

Volunteer Protection Act: A brief history

- Enacted in 1997; first proposed in 1980's
- Proponents' arguments:
 - Increased number of lawsuits against volunteers
 - Negative publicity for the organization
 - Increased insurance premiums
- Opponents' arguments:
 - Unfairly limited only to volunteers
 - Volunteers weren't being sued in high numbers

Volunteer Protection Act

- Stated purpose: to protect volunteers from liability due to harm caused by the actions of the volunteer while volunteering.
- Excludes:
 - motor vehicle accidents
 - criminal activities
 - reckless conduct
 - acts while intoxicated
 - violations of state or federal civil rights laws

Theoretical basis

- Legislation starts as mere words
- Becomes “real” as it is applied to facts
- Process:
 - Statutory construction (interpretation of words)
 - Examination of facts (context)
 - Law is applied to the facts
- Process is repeated in every case but results may differ
- Hermeneutical aspect to process

Hermeneutics

- Reaches understanding through dialog and discourse
- Understanding comes from multiple perspectives merging parts into a whole (fusion of horizons)
- Individual's perspective makes up his/her horizon of understanding, which fuels that part of the discourse.

Research questions

- Two-fold examination of the Volunteer Protection Act
 - Does this law provide the level of immunity intended (proclaimed?) by its proponents?
 - Did these outcomes result in an evolution of the meaning of the Act?
- Using written judicial opinions to see how the courts have ruled on this legislation.

Methodology

- Search of all cases in which VPA is mentioned from 1997 to 2013
 - Westlaw
 - Google search
- 65 different case cites
 - Included instances of same case at different levels
- 50 cases after duplicates, lower court rulings removed

Methodology

- Challenge: most cases are decided on fact-specific basis, with some consideration for precedent.
- When we looked at the cases we asked:
 - Did the court examined and interpreted the law's language
 - Or take the language at face value

Methodology

Attributes of cases

- Defendant
 - Board members
 - All other volunteers
- Type of claims
 - Negligence
 - Statutory violations
 - Intentional acts
 - Civil rights violations
- Jurisdiction (federal or state)
- Level of court (trial, appellate, supreme)

Findings: Breakdown of cases by courts and types of volunteer

	Court		Volunteer		Total Cases
	State	Federal	Service volunteers	Board members	
Negligence	18	8	24	2	26
Statutory Violations	6	7	4	8	13
Intentional Acts	3	1	3	1	4
Civil Rights	0	7	3	5	7
TOTAL	27	23	34	16	50

Table 1. Breakdown of cases by courts and types of volunteer

Findings: Basis for outcome of case

- Three categories
 - Court made decision on whether the Act applied to the facts with little/no discussion
 - Court looked to meaning of Act before deciding on whether the Act applied
 - Court decided the case for reasons other than the Act

Findings: Basis for outcome of case

Application	19
Immunity granted	11
Immunity denied	8
Interpretative	8
Immunity granted	2
Immunity denied	1
Alternate statute	5
Decided on other grounds	23
Alternate statute	13
Disputed facts	4
No factual liability	6
	50

Table 2 Basis for disposition of case

Findings: Outcomes by type of claim

- Negligence: failure to act as reasonably prudent person under the circumstances
- Intentional acts: performed with purpose of carrying out that act
- Statutory violations: a law has been broken
- Civil rights violations: include gender and racial discrimination

Findings: Outcomes by type of claim

Disposition of case	Applicability of VPA		Other grounds
	Immunity granted	Immunity denied	
Types of claims:			
Negligence	9	5	13
Statutory Violations	2	2	7
Intentional Acts	1	2	1
Civil Rights	1	0	7
TOTAL	11	9	28

Table 3 Disposition of cases based on type of claims

Analysis

- Does the Act protect volunteers as per its stated purpose?
 - Yes: grants immunity for unintentional actions
 - No: Volunteers will still be sued and incur associated legal costs.
 - Impact on the organization:
 - Assumes responsibility for acts of volunteers
 - VPA does allow organization to sue the volunteer

Analysis

- Have the court decisions changed the Act's original purpose, an intent to protect America's tradition of volunteerism?
- Hermeneutics tells us that the meaning of the Act should have changed over 17 years since its enactment.

Analysis

- Two ways to look at the question.
- Examine cases to see:
 - Federal or state court
 - Who raised the issue of immunity
 - Basis for decision
 - Type of claim filed
- Look at overall impact

Analysis

- State or federal court: no change in meaning
- Court or defendant brought up immunity issue: no change
- Basis of decision: some change where court actively interpreted language in the Act, resulting in differences in:
 - Nature of exclusions
 - Definition of organization
- Overall, little shift in meaning of law

Discussion

- Lots of questions
- Why were so many cases decided on other grounds?
 - Judges often look to legislative history or past decisions, another set of “horizons”
 - May be easier to look to another law

Discussion

Why so few cases in 17 years?

- Volunteers may be at low risk of lawsuits
- Volunteers don't know about the Act.
- Volunteers are using state immunity laws.
- Act is deterring lawsuits against volunteers.
 - If so, interpretation is taking place outside of the courtroom.

Discussion

- Another interpretative aspect occurring outside of the courtroom:
 - Volunteers and nonprofit managers may interpret these cases to fit their own situations
 - Create policies and practices
 - Decide whether or not to volunteer

Conclusions

We found:

- Nature of volunteerism is unchanged
- Horizon of understanding of volunteer protection is continuously at play
 - VPA only part of the discourse

Implications

- Small part of the concerns of nonprofit managers but has a potentially big impact.
- Does not protect the organization.
- Preventative measures:
 - Liability insurance
 - Waivers
 - Training and Supervision

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Questions?