

S.B. No. 831 (Raised)

**AN ACT CONCERNING MUNICIPAL LIABILITY FOR RECREATIONAL
ACTIVITY ON CERTAIN OPEN SPACE LANDS**

**Testimony before the Environment Committee
January 31, 2011**

Good afternoon. My name is Beth Critton. I live at 39 Cumberland Road in West Hartford, Connecticut. I offer this testimony in support of Raised Bill No. 831 regarding municipal liability for recreational activity.

I am a land use and environmental attorney at Shipman & Goodwin, LLP and past chair of the Connecticut Chapter of the Appalachian Mountain Club (CT-AMC). As a hike leader for CT-AMC, I have led hikes on over 500 miles of Blue-blazed trails (maintained by the CFPA) and the Appalachian Trail in CT.

I was inspired to start hiking after one of my sons completed a through hike of the Appalachian Trail (AT). But his hiking accomplishments did not begin in Springer Mountain, Georgia, where the AT starts. They began in Westmoor Park and at the Metropolitan District reservoir in West Hartford, Connecticut - in the very places that this proposed legislation deals with. That is why I am here. I believe that Connecticut must do everything reasonably possible to foster opportunities for all of us - and most important, for our children and grandchildren - to get outdoors. Restoring municipal recreational immunity is critical to this goal.

My interest in outdoor recreational liability began in the 1990s, when I worked as assistant corporation counsel for the Town of West Hartford. In 1992, the Connecticut Supreme Court, in Manning v. Barenz, 221 Conn. 256 (1992), held definitively that Connecticut's recreational immunity statute, Conn. Gen. Stat. §§ 52-557f through 52-557i, inclusive, (adopted in 1971) included municipalities. In 1996, the Supreme Court overruled Manning in Conway v. Wilton, 238 Conn. 653, a 3-2 decision that narrowly interpreted the word "owner" in the statute, finding it did not include municipalities.

Since Conway, municipalities and quasi-municipal agencies have become increasingly fearful of liability relating to outdoor recreation. This has had a chilling effect on decisions relating to everything from municipal open space acquisition to municipal participation in the creation of rail trails to barring rock climbers from municipally owned crags - thereby sending climbers and their dollars to other states with open climbing venues.

I recently helped to organize a statewide conference on recreational liability that was held in April, 2010. My research for the conference made me keenly aware that neighboring states - specifically Massachusetts (ALM GL 21, §17C) and

Rhode Island (R.I. Gen. Laws §§ 32-6-1 to 32-6-5, inclusive) - include municipalities within the scope of their recreational immunity statutes. Questions from participants at this conference showed that fear of liability clouds decisions as simple as granting permission to an outdoor organization to have a river clean-up. Many of us left the conference mobilized to restore recreational immunity to Connecticut municipalities.

Since that conference, there have been several widely reported cases (a \$ 2.9 million verdict against the Metropolitan District Commission relating to a bicycle accident and an \$ 8 million settlement by the City of Waterbury relating to a snow-tubing accident). Many municipalities and the MDC are considering prohibiting or limiting recreational activities on their lands.

Under current law, fear of liability discourages municipalities from providing local recreational activities. Now is the time to restore recreational immunity to municipalities and quasi-municipal agencies to:

- (1) Encourage the preservation of open space and foster an appreciation of the natural environment;
- (2) Improve Connecticut's public health, economic viability (tourism, recreation-related businesses) and quality of life;
- (3) Meet the need for free, local recreational opportunities, which is particularly important for the many Connecticut residents for whom the "stay-cation" has replaced the vacation;
- (4) Provide consistency by placing municipalities on the same legal footing as private property owners and the state. In this time of tightening municipal budgets and staff reductions, it is unfair to hold municipalities to a standard higher than the standard applied to other property owners, including the State; and
- (5) Reduce costs to municipalities and municipal taxpayers relating to increased insurance premiums and to the defense or settlement of frivolous lawsuits.

As a lawyer and outdoor recreation enthusiast - but most of all as a mother and a grandmother - I strongly support the adoption of legislation to restore recreational immunity to Connecticut municipalities and quasi-municipal agencies.

Respectfully submitted,

Beth Critton