Testimony of Beth Bryan Critton, submitted April 4, 2011

Proposed Bill before the Judiciary Committee; public hearing held on April 4, 2011	
H.B. 6557 AN ACT CONCERNING LIABILITY FOR THE RECREATIONAL USE OF LANDS	Support

Co-Chairs Coleman and Fox, and members of the Judiciary committee:

My name is Beth Critton. I live at 39 Cumberland Road in West Hartford, Connecticut. I offer this testimony in support of H.B. 6557 regarding liability for the recreational use of lands.

I am a land use and environmental attorney. I am also past chair of the Connecticut Chapter of the Appalachian Mountain Club (CT-AMC) and am active in many outdoor recreational organizations. 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 hike of the 2,181 mile 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 submitting testimony. 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 statutes, 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.

In April, 2010, I helped to organize and spoke at a statewide conference on recreational liability. My research for the conference made me 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 as Connecticut did before the Conway decision.

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 ranging from municipal open space acquisition to municipal participation in the creation of rail-trails. After Conway, most municipalities with cliffs closed their cliffs to rock climbers, sending Connecticut climbers and their dollars to other states with open climbing venues.

Fear of liability has been shown to be justified by several widely reported recent 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 further limitations on recreational activities on their lands.

I am aware that lobbyists for special interest groups are advising legislators that "municipalities already enjoy a powerful defense under the doctrine of governmental immunity." However, since Conway, municipalities have no protection under the recreational liability statutes.

With regard to Conn. Gen. Stat. § 52-557n, subsection (b)(1) protects municipalities and employees from liability resulting from "[t]he condition of natural land or unimproved property." But once a trail, bike path, climbing route, or similar recreational "use-way" has been established, the property arguably is no longer "natural land or unimproved property" and arguably a municipality would not have immunity protection under § 52-557n(b)(1).

Conn. Gen. Stat. § 52-557n(b)(4) provides protection from liability with respect to "the condition of an unpaved road, trail or footpath, the purpose of which is to ***provide access to*** a recreational or scenic area, if the political subdivision has not received notice and has not had a reasonable opportunity to make the condition safe." Nothing in § 52-557n(b)(4) provides any specific protection with regard to unpaved roads, trails or footpaths that ***are*** the recreational or scenic area. The section makes no reference to, and therefore arguably provides no immunity relating to, bike paths or rock-climbing routes.

In addition, other municipal immunity statutes, such as Conn. Gen. Stat. § 52-557n(a), which governs claims of negligence for which there is no specific statutory immunity, are sufficiently complex that they engender extensive and expensive litigation regarding whether the municipality was acting in a discretionary or ministerial capacity and other issues. The most straightforward and effective way to reduce or eliminate the high costs associated with such litigation is for the legislature to overrule Conway v. Wilton by amending Conn. Gen. Stat. § 52-557f to make clear that the recreational immunity it provides for private property owners and the State (through Conn. Gen. Stat. § 4-160(c)) is also provided to municipalities and similar entities.

The same special interest group has submitted testimony that, because municipalities have historically made their open space available to the public, there is no need to encourage municipalities to do so now. But the reality is that, with

diminishing revenue, with fewer employees, and with increasing, justifiable fear of liability, municipalities have a powerful incentive not to acquire open space and, if they acquire it, not to make it accessible to the public through trail systems.

Restoring recreational immunity to municipalities and similar entities by overruling Conway v. Wilton through the amendment of Conn. Gen. Stat. § 52-557f to include municipalities will:

(1) Encourage municipal acquisition and preservation of open space; promote free public access to those open spaces; 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;

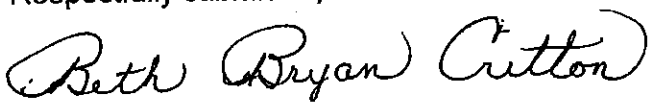
(4) Reduce costs to municipalities and municipal taxpayers relating to increased insurance premiums and to the defense or settlement of frivolous lawsuits; and

(5) Provide consistency by placing municipalities on the same legal footing as private property owners and the State, which, pursuant to Conn. Gen. Stat. § 4-160(c), has rights equal to the "rights and liability of private persons in like circumstances." 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.

As a lawyer and outdoor recreation enthusiast, as a mother and a grandmother, and as a municipal taxpayer, I respectfully ask the legislature to amend Conn. Gen. Stat. § 52-557f to restore recreational immunity protection to Connecticut municipalities and similar entities.

These are my own views and do not represent those of my employer.

Respectfully submitted,



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